to infer that Congress did not intend entirely to exclude proof of contingent debts, since the Act makes express provision for the liquidation of unliquidated claims against the bankrupt,[15] and for the proof of a debt by a surety of the bankrupt in case the creditor fails to prove it.[16]

The unsatisfactory condition of the law on this subject might have been avoided by adopting the provisions in the present English Bankruptcy Act,[17] which provide in the broadest possible language for the valuation and proof of contingent claims of every description. Under it the bankrupt is discharged from every liability, unless the claim is submitted for proof and declared by the court to be incapable of valuation.[18] This accomplishes, as nearly as is possible, what should be the principal objects of bankruptcy legislation; namely, to relieve the debtor of every existing liability, and to enable as many creditors as possible to receive dividends.

RECENT CASES.

AGENCY — PRINCIPAL'S RIGHTS AGAINST AGENT — LIABILITY OF AGENT FOR REFUNDING MONEY DUE THIRD PERSON. — The plaintiff sent to the defendant for collection a check which had been fraudulently drawn on the A bank by A's cashier, as the plaintiff probably knew. The A bank paid the check, but shortly afterward, on discovering the fraud, demanded back the money, and the defendant repaid it. *Held*, that the defendant is liable to the plaintiff for the amount repaid. *Monongahela Nat. Bank* v. *First Nat. Bank*, 75 Atl. 359 (Pa.).

If an agent receives money or property for his principal, he is generally estopped to deny his principal's title. *Roberts* v. *Ogilby*, 9 Price 269. This is true even if it in fact belongs to a third person, who could have demanded it back from the principal, for an agent is not allowed to set up a *jus tertii* unless the right has been asserted against him. *Day* v. *Southwell*, 3 Wis. 657. But if, upon demand, he holds the property for the true owner, or returns it to him, he has a good defense against his principal. *Biddle* v. *Bond*, 6 B. & S. 225; *Robertson* v. *Woodward*, 3 Rich. (S. C.) 251. For a refusal to surrender to the true owner on demand would be a conversion by the agent. *Doty* v. *Hawkins*, 6 N. H. 247. In the principal case, as the plaintiff probably knew of the cashier's wrongful act, he would not be entitled to recover or retain the money as against the A bank. *Stainback* v. *Bank of Va.*, 11 Gratt. (Va.) 269; *Amidon* v. *Wheeler*, 3 Hill (N. Y.) 137. Accordingly the decision seems erroneous, in denying to the agent a justification for refunding to the aggrieved bank.

ATTACHMENT — EFFECT OF LEVY BY MORTGAGEE ON MORTGAGED PROPERTY. — A chattel mortgagee attached the mortgaged goods, which were in the possession

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would be required than under the earlier acts. See *In re* Pettingill & Co., 137 Fed. 143.

[15] § 63 b.

[16] § 67 i. This section, however, merely insures to the surety that the original debt will be proved against the bankrupt. It does not enable him to prove his contingent claim on the bankrupt's implied contract of indemnity; and unless he can do so under § 63, the bankrupt is liable on it after his discharge. Smith *v.* McQuillin, 193 Mass. 289.

[17] ACT OF 1883, 46 & 47 VICT. c. 52, § 37. This substantially follows the ACT OF 1869, 32 & 33 VICT. c. 71, § 31.

[18] Fothergill *v.* Hardy, 13 App. Cas. 351. If the court decides that the claim is not capable of valuation, it is not provable and therefore not discharged. Robinson *v.* Ommanney, 23 Ch. D. 285.